

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2080

(Reference to printed bill)

Strike everything after the enacting clause and insert:

"Section 1. Section 32-1129, Arizona Revised Statutes, is amended to read:

32-1129. Definitions

In sections 32-1129.01, 32-1129.02, 32-1129.03, 32-1129.04 and 32-1129.05, unless the context otherwise requires:

1. "Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving or demolition of any building, structure or improvement or relating to the excavation of or other development or improvement to land.

2. "Contractor" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with an owner to perform work under a construction contract.

3. "FINAL COMPLETION" MEANS THE EARLIEST OF THE FOLLOWING:

(a) WHEN THE WORK OR THE WORK UNDER A PORTION OF A CONSTRUCTION CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE HAS BEEN COMPLETED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONSTRUCTION CONTRACT.

(b) THIRTY DAYS AFTER THE DATE OF FINAL INSPECTION AND FINAL WRITTEN ACCEPTANCE BY THE GOVERNMENTAL BODY THAT ISSUES THE BUILDING PERMIT FOR THE BUILDING, STRUCTURE OR IMPROVEMENT.

~~3.~~ 4. "Owner" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that causes a building, structure or improvement to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved, whether the interest or estate of the person is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee.

1 5. "RETENTION" MEANS A PORTION OF A PROGRESS PAYMENT OTHERWISE DUE
2 FROM THE OWNER TO THE CONTRACTOR THAT IS WITHHELD PURSUANT TO THE TERMS AND
3 CONDITIONS OF A CONSTRUCTION CONTRACT TO ENSURE PROPER PERFORMANCE OF THE
4 CONSTRUCTION CONTRACT.

5 ~~4.~~ 6. "Subcontractor" means any person, firm, partnership,
6 corporation, association or other organization, or a combination of any of
7 them, that has a direct contract with a contractor or another subcontractor
8 to perform a portion of the work under a construction contract.

9 7. "SUBSTANTIAL COMPLETION" OR "SUBSTANTIALLY COMPLETE" MEANS THE
10 EARLIEST OF THE FOLLOWING EVENTS:

11 (a) THE STAGE IN THE PROGRESS OF THE WORK ON A CONSTRUCTION CONTRACT
12 WHEN THE WORK OR THE WORK UNDER A PORTION OF A CONSTRUCTION CONTRACT FOR
13 WHICH THE CONTRACT STATES A SEPARATE PRICE IS SUFFICIENTLY COMPLETE IN
14 ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CONSTRUCTION CONTRACT SO THAT
15 THE OWNER CAN OCCUPY OR USE THE WORK OR SUCH PORTION OF THE WORK FOR ITS
16 INTENDED PURPOSE. WHEN SUBSTANTIAL COMPLETION OCCURS FOR A PORTION OF A
17 CONSTRUCTION CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE,
18 SUBSTANTIAL COMPLETION OCCURS ONLY TO THE WORK UNDER THAT PORTION OF THE
19 CONTRACT.

20 (b) THE DATE ON WHICH THE GOVERNMENTAL BODY THAT ISSUES THE BUILDING
21 PERMIT, IF ANY, FOR THE BUILDING, STRUCTURE OR IMPROVEMENT ISSUES THE WRITTEN
22 ACCEPTANCE ALLOWING THE OWNER TO OCCUPY OR USE THE WORK UNDER A CONSTRUCTION
23 CONTRACT.

24 8. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT, AND SERVICES TO BE
25 PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

26 Sec. 2. Section 32-1129.01, Arizona Revised Statutes, is amended to
27 read:

28 32-1129.01. Progress payments by owner; conditions; interest

29 A. By mutual agreement with a contractor, an owner may make progress
30 payments on construction contracts of less than sixty days. An owner shall
31 make progress payments to a contractor on all other construction contracts.
32 Progress payments shall be made on the basis of a duly certified and approved

1 billing or estimate of the work performed and the materials supplied during
2 the preceding thirty day billing cycle, or such other billing cycle as stated
3 in the construction contract. IF ANY WORK IS PERFORMED DURING THE PRECEDING
4 BILLING CYCLE, A CONTRACTOR SHALL TIMELY SUBMIT A BILLING OR ESTIMATE TO THE
5 OWNER COVERING THE WORK PERFORMED DURING THAT BILLING CYCLE. If billings or
6 estimates are to be submitted in other than thirty day billing cycles, the
7 construction contract and each page of the plans, including bid plans and
8 construction plans, shall specifically identify such other billing cycle in a
9 clear and conspicuous manner as prescribed in subsection B OF THIS SECTION.
10 Except as provided in subsection C OF THIS SECTION, the owner shall make
11 progress payments to the contractor within seven days after the date the
12 billing or estimate is certified and approved pursuant to subsection D OF
13 THIS SECTION. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, AN OWNER
14 SHALL RELEASE RETENTION TO THE CONTRACTOR WITHIN SEVEN DAYS AFTER THE DATE
15 THE BILLING OR ESTIMATE FOR RELEASE OF RETENTION IS CERTIFIED AND APPROVED
16 PURSUANT TO SUBSECTION I OF THIS SECTION. EXCEPT AS PROVIDED IN SUBSECTION C
17 OF THIS SECTION, AN OWNER SHALL MAKE FINAL PAYMENT TO THE CONTRACTOR WITHIN
18 SEVEN DAYS AFTER THE BILLING OR ESTIMATE FOR FINAL PAYMENT IS CERTIFIED AND
19 APPROVED PURSUANT TO SUBSECTION K OF THIS SECTION.

20 B. A construction contract may provide for a billing cycle other than
21 a thirty day billing cycle if the construction contract specifically sets
22 forth such other billing cycle and either of the following applies:

23 1. The following legend or substantially similar language setting
24 forth the other billing cycle appears in clear and conspicuous type on each
25 page of the plans, including bid plans and construction plans:

26 Notice of Alternate Billing Cycle

27 This contract allows the owner to require the submission of
28 billings or estimates in billing cycles other than thirty days.
29 Billings or estimates for this contract shall be submitted as
30 follows:

31 _____
32 _____

1
2 2. The following legend or substantially similar language setting
3 forth the other billing cycle appears in clear and conspicuous type on each
4 page of the plans, including bid plans and construction plans:

5 Notice of Alternate Billing Cycle

6 This contract allows the owner to require the submission of
7 billings or estimates in billing cycles other than thirty days.
8 A written description of such other billing cycle applicable to
9 the project is available from the owner or the owner's designated
10 agent at (telephone number or address, or both), and the owner or
11 its designated agent shall provide this written description on
12 request.

13 C. An owner may make progress payments, **RELEASE OF RETENTION AND FINAL**
14 **PAYMENT** later than seven days after the date the billing or estimate is
15 certified and approved if both:

16 1. The construction contract in a clear and conspicuous manner
17 specifically provides for a later payment defined by a specified number of
18 days after certification and approval.

19 2. The following legend or substantially similar language setting
20 forth the specified number of days appears in clear and conspicuous type on
21 each page of the plans, including bid plans and construction plans:

22 Notice of Extended Payment Provision

23 This contract allows the owner to make payment within ____
24 days after certification and approval of billings and estimates
25 **FOR PROGRESS PAYMENTS, RELEASE OF RETENTION AND FINAL PAYMENT.**

26 D. **EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION,** a billing or
27 estimate **FOR A PROGRESS PAYMENT** shall be deemed approved and certified
28 fourteen days after the owner receives the billing or estimate, unless before
29 that time the owner or the owner's agent prepares and issues a written
30 statement ~~detailed those items in~~ **STATING IN REASONABLE DETAIL THE OWNER'S**
31 **REASONS FOR NOT APPROVING OR CERTIFYING ALL OR A PORTION OF** the billing or
32 estimate ~~that are not approved and certified.~~ **THE OWNER IS DEEMED TO HAVE**

1 RECEIVED THE BILLING OR ESTIMATE WHEN THE BILLING OR ESTIMATE IS SUBMITTED TO
2 ANY PERSON DESIGNATED BY THE OWNER FOR THE RECEIPT, APPROVAL AND
3 CERTIFICATION OF THE BILLING OR ESTIMATE. An owner may decline to approve
4 and certify a billing or estimate or portion of a billing or estimate for ANY
5 OR ALL OF THE FOLLOWING REASONS:

- 6 1. Unsatisfactory job progress~~,~~.
- 7 2. Defective construction work or materials not remedied~~,~~ .
- 8 3. Disputed work or materials~~,~~ .
- 9 4. Failure to comply with other material provisions of the
10 construction contract~~,~~ .
- 11 5. Third party claims filed or reasonable evidence that a claim will
12 be filed~~,~~ .
- 13 6. Failure of the contractor or a subcontractor to make timely
14 payments for labor, equipment and materials,
- 15 7. Damage to the owner~~,~~ .
- 16 8. Reasonable evidence that the construction contract cannot be
17 completed for the unpaid balance of the construction contract sum ~~or a~~
- 18 9. Reasonable amount for retention. ~~The owner is deemed to have~~
19 ~~received the billing or estimate when the billing or estimate is submitted to~~
20 ~~any person designated by the owner for the receipt of these submissions or~~
21 ~~for review or approval of the billing or estimate.~~

22 E. AN OWNER MAY DECLINE TO APPROVE AND CERTIFY A BILLING OR ESTIMATE
23 OR A PORTION OF A BILLING OR ESTIMATE UNDER SUBSECTION D OF THIS SECTION
24 WHETHER OR NOT THE REASON ARISES FROM WORK OR MATERIALS APPEARING ON A PRIOR
25 BILLING OR ESTIMATE AND WHETHER OR NOT THE OWNER HAS PREVIOUSLY APPROVED,
26 CERTIFIED OR PAID SUCH PRIOR BILLING OR ESTIMATE, OR BOTH.

27 ~~E.~~ F. An owner may withhold from a progress payment only an amount
28 that is sufficient to pay the direct COSTS AND expenses the owner reasonably
29 expects to incur to ~~correct any items~~ PROTECT THE OWNER FROM LOSS FOR WHICH
30 THE CONTRACTOR IS RESPONSIBLE AND THAT RESULTS FROM ANY REASONS set forth in
31 writing pursuant to subsection D OF THIS SECTION.

1 ~~F.~~ G. An owner may extend the period within which the billing or
2 estimate ~~is~~ FOR PROGRESS PAYMENTS, RELEASE OF RETENTION AND FINAL PAYMENT ARE
3 certified and approved if both:

4 1. The construction contract in a clear and conspicuous manner
5 specifically provides for an extended time period within which a billing or
6 estimate shall be certified and approved defined by a specified number of
7 days after the owner has received the billing or estimate.

8 2. The following legend or substantially similar language, setting
9 forth the specified number of days, appears in clear and conspicuous type on
10 each page of the plans, including bid plans and construction plans:

11 Notice of Extended Certification and

12 Approval Period Provision

13 This contract allows the owner to certify and approve
14 billings and estimates FOR PROGRESS PAYMENTS, RELEASE OF
15 RETENTION AND FINAL PAYMENT within ____ days after the billings
16 and estimates are received from the contractor.

17 ~~G.~~ H. After the effective date of a construction contract, an owner
18 and contractor may change the number of specified days after certification
19 and approval for the owner to make payment to the contractor or within which
20 a billing or estimate must be certified and approved. Any contractor or
21 subcontractor that does not provide written consent to the change will
22 continue to be paid as previously agreed.

23 I. UPON SUBSTANTIAL COMPLETION OF THE WORK, A CONTRACTOR MAY SUBMIT A
24 BILLING OR ESTIMATE FOR RELEASE OF RETENTION:

25 1. EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, THE BILLING OR
26 ESTIMATE FOR RELEASE OF RETENTION SHALL BE DEEMED APPROVED AND CERTIFIED
27 WITHIN FOURTEEN DAYS AFTER THE OWNER RECEIVES THE BILLING OR ESTIMATE, UNLESS
28 BEFORE THAT TIME THE OWNER OR THE OWNER'S AGENT ISSUES A WRITTEN STATEMENT
29 STATING IN REASONABLE DETAIL THE OWNER'S REASONS FOR NOT APPROVING OR
30 CERTIFYING ALL OR A PORTION OF THE BILLING OR ESTIMATE. THE OWNER IS DEEMED
31 TO HAVE RECEIVED THE BILLING OR ESTIMATE WHEN THE BILLING OR ESTIMATE IS

1 SUBMITTED TO ANY PERSON DESIGNATED BY THE OWNER FOR THE RECEIPT, APPROVAL AND
2 CERTIFICATION OF THE BILLING OR ESTIMATE.

3 2. THE OWNER MAY DECLINE TO APPROVE AND CERTIFY A BILLING OR ESTIMATE
4 FOR RELEASE OF RETENTION OR A PORTION OF A BILLING OR ESTIMATE FOR RELEASE OF
5 RETENTION FOR FAILURE OF THE CONTRACTOR TO COMPLETE A REQUIREMENT OF THE
6 CONSTRUCTION CONTRACT OR FOR ANY REASON AS PERMITTED UNDER SUBSECTION D OF
7 THIS SECTION.

8 3. AN OWNER MAY WITHHOLD FROM RETENTION TO BE RELEASED ONLY AN AMOUNT
9 NOT TO EXCEED ONE HUNDRED AND FIFTY PER CENT OF THE DIRECT COSTS AND EXPENSES
10 THE OWNER REASONABLY EXPECTS TO INCUR TO PROTECT THE OWNER FROM LOSS FOR
11 WHICH THE CONTRACTOR IS RESPONSIBLE AND THAT RESULTS FROM ANY REASONS SET
12 FORTH IN WRITING PURSUANT TO THIS SUBSECTION.

13 4. SUBJECT TO THE FOREGOING AND EXCEPT AS PROVIDED IN SUBSECTION C OF
14 THIS SECTION, THE OWNER SHALL PAY THE RETENTION TO THE CONTRACTOR WITHIN
15 SEVEN DAYS AFTER THE DATE THE BILLING OR ESTIMATE FOR RELEASE OF RETENTION IS
16 CERTIFIED AND APPROVED.

17 5. IF THE OWNER HAS DECLINED TO CERTIFY OR APPROVE A BILLING OR
18 ESTIMATE FOR RELEASE OF RETENTION OR A PORTION OF A BILLING OR ESTIMATE FOR
19 RELEASE OF RETENTION PURSUANT TO THIS SUBSECTION, WHEN ANY REASON OR THE
20 REASONS AS STATED IN THE OWNER'S WRITTEN STATEMENT HAVE BEEN REMOVED, THEN
21 THE CONTRACTOR MAY SUBMIT A SUPPLEMENTAL BILLING OR ESTIMATE FOR ALL OR A
22 PORTION OF THE WITHHELD AMOUNTS OF RETENTION PURSUANT TO PARAGRAPHS 1 THROUGH
23 4 OF THIS SUBSECTION.

24 J. WHEN A CONTRACTOR SUBSTANTIALLY COMPLETES ALL WORK UNDER A PORTION
25 OF A CONSTRUCTION CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE,
26 THE CONTRACTOR MAY SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION ON
27 THAT PORTION OF THE CONSTRUCTION CONTRACT PURSUANT TO SUBSECTION I OF THIS
28 SECTION.

29 K. UPON FINAL COMPLETION OF THE WORK, A CONTRACTOR MAY SUBMIT A
30 BILLING OR ESTIMATE FOR FINAL PAYMENT:

31 1. EXCEPT AS PROVIDED IN SUBSECTION G OF THIS SECTION, A BILLING OR
32 ESTIMATE FOR FINAL PAYMENT SHALL BE DEEMED APPROVED AND CERTIFIED FOURTEEN

1 DAYS AFTER THE OWNER RECEIVES THE BILLING OR ESTIMATE, UNLESS BEFORE THAT
2 TIME THE OWNER OR OWNER'S AGENT PREPARES AND ISSUES A WRITTEN STATEMENT
3 STATING IN REASONABLE DETAIL THE REASONS THE BILLING OR ESTIMATE HAS NOT BEEN
4 APPROVED OR CERTIFIED. THE OWNER IS DEEMED TO HAVE RECEIVED THE BILLING OR
5 ESTIMATE FOR FINAL PAYMENT WHEN THE BILLING OR ESTIMATE IS SUBMITTED TO ANY
6 PERSON DESIGNATED BY THE OWNER FOR THE RECEIPT, APPROVAL AND CERTIFICATION OF
7 THE BILLING OR ESTIMATE.

8 2. THE OWNER MAY DECLINE TO APPROVE AND CERTIFY A BILLING OR ESTIMATE
9 FOR FINAL PAYMENT OR A PORTION OF A BILLING OR ESTIMATE FOR FINAL PAYMENT FOR
10 FAILURE OF THE CONTRACTOR TO COMPLETE A REQUIREMENT OF THE CONSTRUCTION
11 CONTRACT OR FOR ANY REASON AS PERMITTED UNDER SUBSECTION D OF THIS SECTION.

12 3. AN OWNER MAY WITHHOLD FROM FINAL PAYMENT ONLY AN AMOUNT NOT TO
13 EXCEED ONE HUNDRED AND FIFTY PER CENT OF THE DIRECT COSTS AND EXPENSES THE
14 OWNER REASONABLY EXPECTS TO INCUR TO PROTECT THE OWNER FROM LOSS FOR WHICH
15 THE CONTRACTOR IS RESPONSIBLE AND THAT RESULTS FROM ANY REASONS SET FORTH IN
16 WRITING PURSUANT TO THIS SUBSECTION.

17 4. SUBJECT TO THE FOREGOING AND EXCEPT AS PROVIDED IN SUBSECTION C OF
18 THIS SECTION, THE OWNER SHALL MAKE FINAL PAYMENT TO THE CONTRACTOR WITHIN
19 SEVEN DAYS AFTER THE DATE THE BILLING OR ESTIMATE FOR FINAL PAYMENT IS
20 CERTIFIED AND APPROVED.

21 5. IF THE OWNER HAS DECLINED TO CERTIFY OR APPROVE A BILLING OR
22 ESTIMATE FOR FINAL PAYMENT OR A PORTION OF A BILLING OR ESTIMATE FOR FINAL
23 PAYMENT PURSUANT TO THIS SUBSECTION, WHEN ANY REASON OR REASONS AS STATED IN
24 THE OWNER'S WRITTEN STATEMENT HAVE BEEN REMOVED, THEN THE CONTRACTOR MAY
25 SUBMIT A SUPPLEMENTAL BILLING OR ESTIMATE FOR ALL OR A PORTION OF THE
26 WITHHELD AMOUNTS OF FINAL PAYMENT PURSUANT TO PARAGRAPHS 1 THROUGH 4 OF THIS
27 SUBSECTION.

28 6. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, ON PROJECTS
29 THAT REQUIRE A FEDERAL AGENCY'S FINAL APPROVAL OR CERTIFICATION, THE OWNER
30 SHALL MAKE PAYMENT IN FULL ON THE CONSTRUCTION CONTRACT WITHIN SEVEN DAYS
31 AFTER THE FEDERAL AGENCY'S FINAL APPROVAL OR CERTIFICATION.

1 ~~H.—~~ L. When a contractor completes ~~and an owner approves and certifies~~
2 ~~all work under a construction contract, the owner shall make payment in full~~
3 ~~on the construction contract within seven days. When a contractor completes~~
4 ~~and an owner approves and certifies~~ all work under a portion of a
5 construction contract for which the contract states a separate price, the
6 ~~owner shall make payment in full~~ CONTRACTOR MAY SUBMIT A BILLING OR ESTIMATE
7 FOR FINAL PAYMENT on that portion of the construction contract ~~within seven~~
8 ~~days. On projects that require a federal agency's final approval or~~
9 ~~certification, the owner shall make payment in full on the construction~~
10 ~~contract within seven days of the federal agency's final approval or~~
11 ~~certification~~ PURSUANT TO SUBSECTION K OF THIS SECTION.

12 ~~I.—~~ M. Payment shall not be required pursuant to this section unless
13 the contractor provides the owner with a billing or estimate ~~for the work~~
14 ~~performed or the material supplied~~ SUBSTANTIALLY in accordance with the terms
15 of the construction contract between the parties.

16 ~~J.—~~ N. A construction contract shall not alter the rights of any
17 contractor, subcontractor or material supplier to receive prompt and timely
18 ~~progress~~ payments as provided under this article.

19 ~~K.—~~ O If an owner or a third party designated by an owner as the
20 person responsible for making progress payments RELEASING RETENTION OR FINAL
21 PAYMENT on a construction contract does not make a timely payment pursuant to
22 this section, the owner shall pay the contractor interest at the rate of one
23 and one-half per cent a month or fraction of a month on the unpaid balance,
24 or at a higher rate as the parties to the construction contract agree.

25 ~~L.—~~ P. On the written request of a subcontractor, the owner shall
26 notify the subcontractor within five days after the issuance of a progress
27 payment to the contractor. On the written request of a subcontractor, the
28 owner shall notify the subcontractor within five days after the owner
29 RELEASES RETENTION OR makes the final payment to the contractor on the
30 construction contract. A SUBCONTRACTOR'S REQUEST PURSUANT TO THIS SUBSECTION
31 SHALL REMAIN IN EFFECT FOR THE DURATION OF THE SUBCONTRACTOR'S WORK ON THE
32 PROJECT.

1 ~~M.~~ Q. In any action or arbitration brought to collect payments or
2 interest pursuant to this section, the successful party shall be awarded
3 costs and attorney fees in a reasonable amount.

4 ~~N.~~ R. If the owner and contractor are a single entity, that entity
5 shall pay its subcontractors or material suppliers within fourteen days after
6 the billing or estimate is certified and approved unless the deadlines for
7 approval and certification or for payment have been modified pursuant to
8 subsection C or ~~F~~ G OF THIS SECTION.

9 S. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, AN OWNER
10 MAY DEFINE RETENTION, SUBSTANTIAL COMPLETION AND FINAL COMPLETION TO HAVE
11 MEANINGS DIFFERENT THAN THAT STATED IN SECTION 32-1129, IF:

12 1. THE CONSTRUCTION CONTRACT IN A CLEAR AND CONSPICUOUS MANNER DEFINES
13 THE TERM OR TERMS RETENTION, SUBSTANTIAL COMPLETION, OR FINAL COMPLETION OR
14 BOTH.

15 2. THE LEGEND SET FORTH IN SUBSECTION U OF THIS SECTION OR
16 SUBSTANTIALLY SIMILAR LANGUAGE, APPEARS IN CLEAR AND CONSPICUOUS TYPE ON EACH
17 PAGE OF THE PLANS, INCLUDING BID PLANS AND CONSTRUCTION PLANS.

18 3. THE DIFFERENT MEANINGS OF RETENTION, SUBSTANTIAL COMPLETION AND
19 FINAL COMPLETION ARE SET FORTH IN THE PLANS, INCLUDING ON BID PLANS AND
20 CONSTRUCTION PLANS, AND THE LEGEND REQUIRED BY PARAGRAPH 2 OF THIS SUBSECTION
21 DESIGNATES THE SHEET NUMBER OF THE PLANS ON WHICH THE DIFFERENT MEANINGS OF
22 THE TERMS CAN BE FOUND.

23 T. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, AN OWNER
24 MAY ESTABLISH DIFFERENT TIMING AND CONDITIONS FOR WHEN THE CONTRACTOR MAY
25 SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION OR FOR FINAL PAYMENT
26 AND FOR WHEN SUCH PAYMENTS SHALL BE DUE, IF:

27 1. THE CONSTRUCTION CONTRACT IN A CLEAR AND CONSPICUOUS MANNER
28 ESTABLISHES DIFFERENT TIMING FOR WHEN THE CONTRACTOR MAY SUBMIT A BILLING OR
29 ESTIMATE FOR RELEASE OF RETENTION OR FOR FINAL PAYMENT OR BOTH AND FOR WHEN
30 SUCH PAYMENTS SHALL BE DUE.

1 2. THE LEGEND SET FORTH IN SUBSECTION U OF THIS SECTION OR
2 SUBSTANTIALLY SIMILAR LANGUAGE, APPEARS IN CLEAR AND CONSPICUOUS TYPE ON EACH
3 PAGE OF THE PLANS, INCLUDING BID PLANS AND CONSTRUCTION PLANS.

4 3. THE DIFFERENT TIMING AND CONDITIONS FOR WHEN THE CONTRACTOR MAY
5 SUBMIT A BILLING OR ESTIMATE FOR RELEASE OF RETENTION OR FOR FINAL PAYMENT
6 AND FOR WHEN SUCH PAYMENTS SHALL BE DUE ARE SET FORTH IN THE PLANS, INCLUDING
7 ON BID PLANS AND CONSTRUCTION PLANS, AND THE LEGEND REQUIRED BY PARAGRAPH 2
8 OF THIS SUBSECTION DESIGNATES THE SHEET NUMBER OF THE PLANS ON WHICH THE
9 DIFFERENT TIMING AND CONDITIONS CAN BE FOUND.

10 U. THE LEGEND FOR MAKING ONE OR MORE OF THE MODIFICATIONS SET FORTH IN
11 SUBSECTIONS S THROUGH U OF THIS SECTION SHALL BE AS FOLLOWS:

12 NOTICE OF ALTERNATE ARRANGEMENTS FOR
13 RELEASE OF RETENTION AND FINAL PAYMENT

14 THIS CONTRACT ALLOWS THE OWNER TO MAKE ALTERNATE
15 ARRANGEMENTS FOR THE OCCURRENCE OF SUBSTANTIAL COMPLETION, THE
16 RELEASE OF RETENTION AND MAKING OF FINAL PAYMENT. SUCH ALTERNATE
17 ARRANGEMENTS ARE DISCLOSED ON SHEET NO. _____ OF THESE PLANS.

18 V. IF THE OWNER REQUIRES AND THE CONTRACTOR PROVIDES PAYMENT AND
19 PERFORMANCE BONDS COVERING THE CONTRACTOR'S PERFORMANCE OF A CONSTRUCTION
20 CONTRACT EXECUTED BY ONE OR MORE SURETY COMPANIES HOLDING A CERTIFICATE OF
21 AUTHORITY TO TRANSACT SURETY BUSINESS IN THIS STATE ISSUED BY THE DIRECTOR OF
22 THE DEPARTMENT OF INSURANCE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1, THEN
23 THE OWNER SHALL NOT WITHHOLD RETENTION ON THAT CONSTRUCTION CONTRACT IN AN
24 AMOUNT IN EXCESS OF THREE PER CENT OF THE CONTRACT VALUE.

25 Sec. 3. Section 32-1129.02, Arizona Revised Statutes, is amended to
26 read:

27 32-1129.02. Performance and payment by contractor,
28 subcontractor or material supplier: conditions:
29 interest

30 A. Notwithstanding the other provisions of this ~~section~~ ARTICLE,
31 performance by a contractor, subcontractor or material supplier in accordance
32 with the provisions of a construction contract entitles the contractor,

1 subcontractor or material supplier to payment from the party with whom the
2 contractor, subcontractor or material supplier contracts.

3 B. If a subcontractor or material supplier has performed in accordance
4 with the provisions of a construction contract, the contractor shall pay to
5 its subcontractors or material suppliers and each subcontractor shall pay to
6 its subcontractors or material suppliers, within seven days of receipt by the
7 contractor or subcontractor of each progress payment, RETENTION RELEASE or
8 final payment, the full amount received for such subcontractor's work and
9 materials supplied based on work completed or materials supplied under the
10 subcontract. Payment shall not be required pursuant to this subsection
11 unless the subcontractor or material supplier provides to the contractor or
12 subcontractor a billing or ~~invoice for the work performed or material~~
13 ~~supplied~~ ESTIMATE SUBSTANTIALLY in ~~compliance~~ ACCORDANCE with the terms of
14 the CONSTRUCTION contract between the parties. Each subcontractor or
15 material supplier shall provide a waiver of any mechanic's or materialman's
16 lien conditioned upon payment for the work completed or material supplied.
17 The contractor or subcontractor may require that such conditional waivers of
18 lien be notarized. Any diversion by the contractor or subcontractor of
19 payments received for work performed pursuant to a contract, or failure to
20 reasonably account for the application or use of such payments, constitutes
21 grounds for disciplinary action by the registrar of contractors. Violations
22 of this section shall be grounds for suspension or revocation of a license or
23 other disciplinary action by the registrar pursuant to section 32-1154,
24 subsections B, C and D. The subcontractor or material supplier may notify
25 the registrar of contractors and the owner in writing of any payment less
26 than the amount or percentage approved for the class or item of work as set
27 forth in this section.

28 C. Nothing in this section prevents the contractor or subcontractor,
29 at the time of application or certification to the owner or contractor, from
30 withholding such application or certification to the owner or contractor for
31 payment to the subcontractor or material supplier for ANY OR ALL OF THE
32 FOLLOWING REASONS:

- 1 1. Unsatisfactory job progress,~~—~~ .
- 2 2. Defective construction work or ~~material~~ MATERIALS not remedied,~~—~~ .
- 3 3. Disputed work,~~—~~ OR MATERIALS.
- 4 4. Failure to comply with other material provisions of the
- 5 construction contract,~~—~~ .
- 6 5. Third party claims filed or reasonable evidence that a claim will
- 7 be filed,~~—~~ .
- 8 6. Failure of the subcontractor to make timely payments for labor,
- 9 equipment and materials,~~—~~ .
- 10 7. Damage to a contractor or another subcontractor or material
- 11 supplier,~~—~~ .
- 12 8. Reasonable evidence that the subcontract cannot be completed for
- 13 the unpaid balance of the subcontract sum ~~or a reasonable amount for~~
- 14 ~~retention that does not exceed the actual percentage retained by the owner.~~
- 15 9. BECAUSE THE OWNER HAS WITHHELD RETENTION FROM THE CONTRACTOR, IN
- 16 WHICH CASE AMOUNT OF THE WITHHOLDING BY THE CONTRACTOR SHALL NOT EXCEED THE
- 17 ACTUAL AMOUNT OF THE RETENTION RETAINED BY THE OWNER PERTAINING TO THE
- 18 SUBCONTRACTOR'S WORK.
- 19 D. NO CONTRACTOR OR SUBCONTRACTOR SHALL WITHHOLD RETENTION FROM A
- 20 SUBCONTRACTOR IN AN AMOUNT GREATER THAN THE ACTUAL AMOUNT OF THE RETENTION
- 21 RETAINED BY THE OWNER PERTAINING TO THE WORK OF THE SUBCONTRACTOR.
- 22 E. WITHIN SEVEN DAYS OF RECEIVING AN OWNER'S WRITTEN STATEMENT
- 23 PURSUANT TO SECTION 32-1129.01, SUBSECTION D, THE CONTRACTOR SHALL PREPARE
- 24 AND ISSUE A WRITTEN STATEMENT TO THE APPLICABLE SUBCONTRACTORS STATING IN
- 25 REASONABLE DETAIL WHICH AMOUNTS BEING WITHHELD BY THE OWNER ARE ATTRIBUTABLE
- 26 TO THOSE SUBCONTRACTORS. WITHIN SEVEN DAYS OF RECEIVING A CONTRACTOR'S
- 27 WRITTEN STATEMENT AS SET FORTH HEREIN, THE SUBCONTRACTOR SHALL PREPARE AND
- 28 ISSUE A WRITTEN STATEMENT TO THE APPLICABLE SUBCONTRACTORS AND MATERIAL
- 29 SUPPLIERS STATING IN REASONABLE DETAIL WHICH AMOUNTS BEING WITHHELD BY THE
- 30 CONTRACTOR ARE ATTRIBUTABLE TO THOSE SUBCONTRACTORS OR MATERIAL SUPPLIERS.
- 31 F. IN THE EVENT THAT AMOUNTS ARE WITHHELD BY AN OWNER PURSUANT TO
- 32 SECTION 32-1129.01, SUBSECTIONS D, I OR J, THAT THE AMOUNT RECEIVED BY THE

1 CONTRACTOR FROM THE OWNER FOR THE PROGRESS PAYMENT, RELEASE OF RETENTION OR
2 FINAL PAYMENT IS INSUFFICIENT TO PAY FOR ALL WORK SATISFACTORILY PERFORMED BY
3 SUBCONTRACTORS WHOSE WORK IS NOT THE SUBJECT OF THE OWNER'S WRITTEN STATEMENT
4 ISSUED PURSUANT TO SECTION 32-1129.01, SUBSECTIONS D, I OR J, THE CONTRACTOR
5 SHALL NONETHELESS MAKE PROGRESS PAYMENT, RELEASE OF RETENTION AND FINAL
6 PAYMENT TO THOSE SATISFACTORILY PERFORMING SUBCONTRACTORS WITHIN SEVEN DAYS
7 AFTER PAYMENT WOULD HAVE OTHERWISE BEEN MADE BY THE OWNER PURSUANT TO SECTION
8 32-1129.01, SUBSECTION A.

9 G. IN THE EVENT THAT AMOUNTS ARE WITHHELD BY A CONTRACTOR OR
10 SUBCONTRACTOR PURSUANT TO SECTION 32-1129.02, SUBSECTION C SUCH THAT THE
11 AMOUNT RECEIVED BY THE SUBCONTRACTOR FROM THE CONTRACTOR IS INSUFFICIENT TO
12 PAY FOR ALL WORK SATISFACTORILY PERFORMED BY SUBCONTRACTORS WHOSE WORK IS NOT
13 THE SUBJECT OF THE AMOUNTS WITHHELD, OR MATERIALS SATISFACTORILY PROVIDED BY
14 MATERIAL SUPPLIERS WHOSE MATERIALS ARE NOT THE SUBJECT OF THE AMOUNTS
15 WITHHELD, THE SUBCONTRACTOR SHALL NONETHELESS MAKE PAYMENT TO THOSE
16 SATISFACTORILY PERFORMING SUBCONTRACTORS AND MATERIAL SUPPLIERS WITHIN SEVEN
17 DAYS AFTER PAYMENT WOULD HAVE OTHERWISE BEEN MADE BY THE CONTRACTOR OR
18 SUBCONTRACTOR PURSUANT TO SECTION 32-1129.02, SUBSECTION B.

19 ~~D.~~ H. If a ~~periodic~~ PROGRESS or final payment OR RELEASE OF RETENTION
20 to a subcontractor or material supplier is delayed by more than seven days
21 after receipt of ~~periodic~~ PROGRESS or final payment OR RELEASE OF RETENTION
22 by the contractor or subcontractor, the contractor or subcontractor shall pay
23 its subcontractor or material supplier interest, except for periods of time
24 during which payment is withheld pursuant to subsection C of this section,
25 beginning on the eighth day, at the rate of one and one-half per cent per
26 month or a fraction of a month on the unpaid balance or at such higher rate
27 as the parties agree.

28 ~~E.~~ I. Any licensed contractor, licensed subcontractor or material
29 supplier who files a complaint with the registrar of contractors under this
30 section shall be required to post a surety bond or cash deposit of five
31 hundred dollars or one-half of the amount due, whichever is less, with the
32 registrar to secure the payment of claims under this section. If the

1 complaint is determined by the registrar to be without merit and frivolous,
2 the registrar shall order the person who filed the complaint to pay one-half
3 of the amount of the required surety bond or cash deposit to the respondent
4 and one-half to the registrar for deposit into the state general fund. If no
5 claim may be made under this section against the surety bond or cash deposit,
6 the surety bond or cash deposit shall be returned to the complainant. The
7 surety bond or cash deposit shall be in the name of the licensee or material
8 supplier who files the complaint and shall be subject to claims by the
9 registrar of contractors and the respondent licensee as provided in this
10 section. The surety bond or cash deposit shall be conditioned upon and
11 provide for payment upon the presentation of a certified copy of the order of
12 the registrar and a certification by the complainant of nonpayment within
13 thirty days after the order becomes final. The surety bond shall be executed
14 by the complainant as principal with a corporation duly authorized to
15 transact surety business in this state. Evidence of the surety bond shall be
16 submitted to the registrar in a form acceptable to the registrar. The cash
17 deposit shall be deposited, pursuant to sections 35-146 and 35-147, by the
18 registrar in the contractors prompt pay complaint fund and shall be held for
19 the payment of claims.

20 ~~F.~~ J. In any action or arbitration brought to collect payments or
21 interest pursuant to this section, the successful party shall be awarded
22 costs and attorney fees in a reasonable amount.

23 K. IF THE CONTRACTOR REQUIRES AND A SUBCONTRACTOR PROVIDES PAYMENT AND
24 PERFORMANCE BONDS COVERING THE SUBCONTRACTOR'S PERFORMANCE OF A CONSTRUCTION
25 SUBCONTRACT EXECUTED BY ONE OR MORE SURETY COMPANIES HOLDING A CERTIFICATE OF
26 AUTHORITY TO TRANSACT SURETY BUSINESS IN THIS STATE ISSUED BY THE DIRECTOR OF
27 THE DEPARTMENT OF INSURANCE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1, THEN
28 THE CONTRACTOR SHALL PAY TO THE SUBCONTRACTOR ANY AMOUNT OF RETENTION
29 RETAINED BY THE OWNER PERTAINING TO THE SUBCONTRACTOR'S WORK.

30 Sec. 4. Section 32-1129.05, Arizona Revised Statutes, is amended to
31 read:

32 32-1129.05. Construction contracts; void provisions

1 A. The following are against this state's public policy and are void
2 and unenforceable:

3 1. A provision, covenant, clause or understanding in, collateral to or
4 affecting a construction contract that makes the contract subject to the laws
5 of another state or that requires any litigation, ~~arbitration or other~~
6 ~~dispute resolution proceeding~~ arising from the contract to be conducted in
7 another state.

8 2. A provision, covenant, clause or understanding in, collateral to or
9 affecting a construction contract stating that a party to the contract cannot
10 suspend performance under the contract or terminate the contract if another
11 party to the contract fails to make prompt payments under the contract
12 pursuant to section 32-1129, 32-1129.01 or 32-1129.02.

13 B. ANY MEDIATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING
14 ARISING FROM A CONSTRUCTION CONTRACT FOR WORK PERFORMED IN THIS STATE SHALL
15 BE CONDUCTED IN THIS STATE.

16 Sec. 5. Title 32, chapter 10, article 2, Arizona Revised Statutes, is
17 amended by adding section 32-1129.07, to read:

18 32-1129.07. Applicability to construction of a dwelling for an
19 owner-occupant

20 A. THE REQUIREMENTS IN SECTION 32-1129.01 SHALL NOT APPLY ON
21 CONSTRUCTION CONTRACTS FOR THE CONSTRUCTION OF A DWELLING FOR AN OWNER-
22 OCCUPANT UNLESS THE FOLLOWING LEGEND OR SUBSTANTIALLY SIMILAR LANGUAGE
23 APPEARS IN CLEAR AND CONSPICUOUS TYPE ON THE FRONT PAGE OF EACH BILLING OR
24 ESTIMATE FROM THE CONTRACTOR TO THE OWNER-OCCUPANT:

25 NOTICE TO OWNER OF APPLICABILITY OF ARIZONA PROMPT PAY ACT
26 (NOTICE REQUIRED BY A.R.S. § 32-1129.07)

27 ATTENTION: YOUR OBLIGATIONS TO PAY YOUR CONTRACTOR ARE SUBJECT TO
28 THE ARIZONA PROMPT PAY ACT. THAT ACT IS SET FORTH IN ARIZONA
29 REVISED STATUTES SECTIONS 32-1129.01 THROUGH 32-1129.07. THE FULL
30 TEXT OF THE STATUTES ARE AVAILABLE AT YOUR LOCAL PUBLIC LIBRARY OR
31 THE INTERNET. UNDER THAT ACT, YOU HAVE THE RIGHT TO WITHHOLD ALL
32 OR A PORTION OF A PAYMENT TO A CONTRACTOR FOR A VARIETY OF

1 REASONS, INCLUDING DEFECTIVE CONSTRUCTION WORK THAT HAS NOT BEEN
2 CORRECTED. HOWEVER, IN ORDER TO DO SO, YOU MUST ISSUE A WRITTEN
3 STATEMENT SETTING FORTH IN REASONABLE DETAIL YOUR REASONS FOR
4 WITHHOLDING PAYMENTS WITHIN FOURTEEN (14) DAYS FROM THE DATE YOU
5 RECEIVE A BILLING OR ESTIMATE. IF YOU FAIL TO ISSUE THE WRITTEN
6 STATEMENT WITHIN THAT PERIOD, THE BILLING OR ESTIMATE WILL BE
7 DEEMED APPROVED. ONCE THE BILLING OR ESTIMATE IS DEEMED APPROVED,
8 YOU MUST PAY THE BILLING OR ESTIMATE WITHIN SEVEN (7) DAYS
9 THEREAFTER. GENERALLY, YOU ARE LIMITED BY THE ACT TO WITHHOLDING
10 ONLY AN AMOUNT THAT IS SUFFICIENT TO PAY THE DIRECT COSTS AND
11 EXPENSES YOU REASONABLY EXPECTS TO INCUR TO PROTECT YOU FROM LOSS
12 FOR WHICH THE CONTRACTOR IS RESPONSIBLE. YOU ARE ENCOURAGED TO
13 READ THE ACT IN FULL TO KNOW YOUR OBLIGATIONS AND RIGHTS.

14 B. FOR THE PURPOSES OF THIS SECTION, "DWELLING" AND "OWNER-OCCUPANT"
15 SHALL HAVE THE SAME MEANINGS AS PRESCRIBED IN SECTION 33-1002."

16 Amend title to conform

and, as so amended, it do pass

MICHELE REAGAN
Chairman

2080-se-com
3/4/09
H:jjb